

STATE OF COLORADO

PUBLIC UTILITIES COMMISSION

Robert J. Hix, Chairman
Vincent Majkowski, Commissioner
R. Brent Alderfer, Commissioner
Bruce N. Smith, Director

Department of Regulatory Agencies

Joseph A. Garcia
Executive Director



Roy Romer
Governor

October 30, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
Portals
445 Twelfth Street, S.W.
Washington, DC 20554

re: NSD-L-97-42 In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717 (CC Docket No. 96-98)

Dear Ms. Salas:

Enclosed for filing in the above matter please find one original and five copies of the Colorado Public Utilities Commission's Petition for Clarification of the FCC's September 28, 1998 Opinion.

Sincerely,

Anthony Marquez
Anthony Marquez, Esq.

AM/bha
Enc.

cc: Robert J. Hix, Chairman, Colorado Public Utilities Commission (w/enc.)
Vincent Majkowski, Commissioner, Colorado Public Utilities Commission (w/enc.)
R. Brent Alderfer, Commissioner, Colorado Public Utilities Commission (w/enc.)
Attached Service List (w/enc.)

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)
)
Petition for Declaratory Ruling and)
Request for Expedited Action on the July) NSD File No. L-97-42
15, 1997 Order of the Pennsylvania)
Public Utility Commission Regarding)
Area Codes 412, 601, 215 and 717)
)
Implementation of the Local Competition)
Provisions of the Telecommunications) CC Docket No. 96-98
Act of 1996)

**PETITION FOR CLARIFICATION OF MEMORANDUM OPINION AND
ORDER AND ORDER ON RECONSIDERATION (FCC 98-224)**

On September 28, 1998, the Federal Communications Commission ("FCC") issued its Memorandum Opinion and Order and Order on Reconsideration ("Order")¹ regarding the July 15, 1997 Pennsylvania Public Utility Commission order concerning area codes 412, 610, 215, and 717. The Colorado Public Utilities Commission ("Colorado PUC") respectfully requests that the FCC provide clarification, or in the alternative, a correction to its Order relating to the specific delegation of authority on numbering issues to the states. The Colorado PUC requests that the FCC clarify its intention described in paragraphs 24 and 31 of the Order to provide specific guidance to the states with regard to the limits, if any, on the types of number conservation efforts that must be brought to the Common Carrier Bureau for approval.

BACKGROUND

The Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), gives the Commission plenary jurisdiction over numbering issues that pertain to the United States. Specifically, section 251(e)(1) of the Act provides:

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in this paragraph shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.

The FCC has issued rules² defining its delegation of specific authority to the states to resolve matters involving the introduction of new area codes within their states. The Colorado PUC has acted within the scope granted to it by the FCC in managing the numbering resource and in the introduction of new area codes in Colorado. Colorado has recently implemented an overlay area code (720) in the Denver metropolitan area³. In its efforts to effectively manage the remaining numbering resource in the 303 area code, the Colorado PUC set up an industry Task Force.⁴ The Task Force was given the objective of providing the Commission with a recommended solution to the long-term efficient use of telephone numbers within the area codes in Colorado; an objective timeline for the implementation of this long-term solution; and recommendations for interim conservation methods consistent with the long-term solution. The Task Force has submitted two reports to the Commission on October 30, 1997 and January 30, 1998.

In its First Report to the Commission, the Task Force considered several conservation methods and made certain recommendations. The Task Force considered rate center consolidation; utilization of protected central office, test and maintenance codes; reclamation of unused central office codes already assigned to a provider; the use of 0XX and 1XX codes; adjustment of NPA exhaust forecasts; and number pooling. In its report, the Task Force recommended immediate consideration of rate center consolidation. Additionally, the Task Force members were able to effect the extension the NPA exhaust date by the voluntary return of some unused codes to the administrator. The

¹ *Memorandum Opinion and Order and Order on Reconsideration* (Order), NSD File No. L-97-42 and CC Docket No. 96-98, September 28, 1998.

² See FCC Rule 52.19 (47 CFR 52.19).

³ The introduction of NXX codes from the new 720 area code and the implementation of mandatory ten-digit dialing was completed September 1, 1998.

⁴ The Colorado Numbering Task Force was established pursuant to Commission Decision No. C97-761 in Docket No. 97M-329T to provide more efficient management of telephone numbers in the state.

Colorado PUC also opened a docket, held hearings and issued a decision on rate center consolidation.⁵ The rate center consolidation and concurrent expansion of the local calling area is scheduled to be implemented on December 31, 1998, and, thus, did not provide any relief to the 303 area code.

The Colorado PUC has also adopted rules regarding the efficient use of telephone numbers.⁶ These rules require all NXX code holders with numbers assigned in the State of Colorado to manage their numbering resources to maintain thousand block integrity. The rules also require all NXX code holders to make their uncontaminated thousand blocks available for reassignment upon implementation of number pooling. The rules also have general provisions requiring all NXX code holders to provide services in such a manner as not to encourage the inefficient use or depletion of telephone numbers in any Colorado NPA.

The Task Force has been considering other conservation methods and has been participating in national industry efforts.⁷ Currently, the Task Force is evaluating the possibility of statewide number pooling in Colorado as a long term solution. A report is scheduled to be presented to the Colorado PUC by the end of the year on this issue.

DISCUSSION

As the FCC is aware, the depletion of numbering resources in recent years has been unprecedented. States are being asked to decide on difficult area code relief proposals at an ever increasing pace. In the mid-1980s, Colorado needed only one NPA. Today, we have four. The decisions facing state commissions are not easy decisions, primarily because of the disruptive effects that area code exhaust situations place on consumers. The FCC recognized in its Second Report and Order that state commissions

⁵ See Decision Nos. C98-439 dated May 5, 1998 and C98-619 dated June 17, 1998 in Docket No. 97M-548T (*In the Matter of Rate Center Consolidation within the 303 Area Code, Creation of a Single Local Calling Area Defined as All Territory Within the 303 Area Code, and Permissive 11 Digit Local Dialing*).

⁶ See Decision No. C98-278 dated March 17, 1998 (*In the Matter of Proposed Rules Regarding the Efficient Use of Telephone Numbers*, 4 CCR 723-49).

⁷ Commissioner Vincent Majkowski and staff member Bruce Armstrong are currently members of the North American Numbering Council (NANC).

are closer to the specific situations relating to area code relief⁸ and delegated area code relief responsibilities to the states.

As states like Colorado deal with the public outcry against area code splits and overlays, the industry is diligently working on solutions. However, some states believe that this process is taking too long and are attempting to assist in solving the problem by implementing various state-specific conservation methods. The FCC recognizes and commends many of these efforts in its Order. However, it is disconcerting that statements in the Order lend confusion to possible future efforts by the states. Paragraphs 24 and 31 are of particular concern to the Colorado PUC.

Paragraph 24

Paragraph 24 of the Order states:

We clarify that state commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator. First, a state commission may not order such a return pursuant to a pooling trial. As discussed below, we decline to grant states the authority to order mandatory number pooling. Thus, states do not have the authority to order a return of a partial or entire NXX as part of a number pooling trial. Further, a state commission may not order the return of an NXX code or a 1,000 block pursuant to a number rationing scheme implemented as part of a state-ordered area code relief plan. Such actions fall outside of the authority granted the states to initiate traditional area code relief, and would interfere with the code administrator's functioning pursuant to rules delegating to the code administrator the authority to manage the United States CO code numbering resource. [footnotes omitted]

This paragraph could be interpreted to preclude states from managing the numbering resource in an efficient manner by apparently prohibiting them from requiring reclamation of unused central office codes or thousand blocks. This places the numbering resource in a potentially anticompetitive position. If a state is considering an area code exhaust situation and data shows a carrier with excess resources not necessary to meet that carrier's forecasted demand, the states should be allowed to require that carrier to return the resource to the administrator. Leaving that responsibility to the FCC would

⁸ See *Second Report and Order and Memorandum Opinion and Order*, CC Docket 96-98, 11 FCC Rcd 19392 (1996).

defeat the entire purpose of efficient management of area code relief, because of time constraints. In addition, the states are in a much better position to judge the nature of a carrier's need for numbering resources in that state.

If a state has successfully implemented number pooling (either on a trial basis or subsequent to national guidelines), the state must be allowed to require carriers to make unused blocks of numbers available for the pool. Without such authority, the FCC's intention to optimize the numbering resource will be defeated. An area code that is already close to exhaust under current central office code guidelines could not benefit from number pooling unless unused uncontaminated thousand blocks are returned to the pool. In fact, the Industry Numbering Committee's Thousand Block Pooling Guidelines require that each participating Service Provider contribute embedded thousand blocks to the pool that are up to and including 10% contaminated.

Although the issues discussed in paragraph 24 seem to refer to number pooling trials, the Colorado PUC requests that the FCC clarify its Order consistent with the discussion above.

Paragraph 31

Paragraph 31 of the Order states:

We are very interested in working with state commissions that have additional ideas for innovative **number conservation methods** that this Commission has not addressed, or state commissions that wish to initiate number pooling trials the implementation of which would fall outside of the guidelines we adopt in this Order. We therefore encourage such state commissions, prior to the release of any order implementing a **number conservation plan** or number pooling trial, to request from the Commission an additional, limited, delegation of authority to implement these **proposed conservation methods**, comparable to the authority we are granting to Illinois in this Order. Because of the NANC's broad industry representation and the subject-matter expertise of its members, the Commission will seek a recommendation from the NANC on the proposed **conservation method** that a state commission presents. We encourage state commissions to present their proposals to the NANC first. If a **proposed conservation method** will conserve numbers and thus slow the pace of area code relief, without having anticompetitive consequences, we will consider delegating additional authority to state commissions to

use the **conservation method**. We direct the Chief, Common Carrier Bureau, to make this determination, consistent with the authority we have delegated to the Common Carrier Bureau to determine whether area code relief plans are consistent with our regulations by acting on petitions filed by parties wishing to dispute proposed area code plans. We direct the Chief, Common Carrier Bureau, to consult with other Bureaus within the Commission, for example, the Chief, Wireless Telecommunications Bureau, when necessary to determine the potential ramifications on a particular industry segment of a proposed conservation method.⁹ (emphasis added)

The Colorado PUC is requesting the FCC to clarify what it means in this paragraph when it refers to "conservation method". We request that the FCC clarify paragraph 31 according to the following discussion: The Colorado PUC assumes that all of its efforts to manage numbers efficiently in Colorado constitute "conservation methods." Informal conversations with industry representatives since the release of the Order indicate that some may believe current that Colorado PUC rules and decisions are subject to this paragraph and should be reviewed by the Common Carrier Bureau. Based upon an overall reading of the Order, we do not think that this was the FCC's intention, nor do we think it is appropriate. There is no bright line between conservation efforts by states that need FCC review and conservation efforts that do not. Therefore, we believe that it is not consistent with the purposes of the Act to have the FCC review each and every state action that might be termed a conservation method. It is our opinion that the process described in paragraph 31 should only be used when and if someone is uncertain or questions whether a proposed state conservation method comports with FCC and statutory objectives. All other conservation methods need not burden the FCC or the NANC.

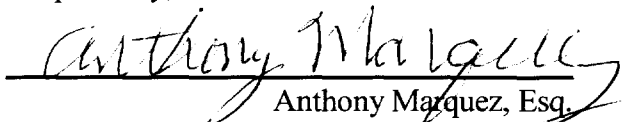
RECOMMENDATION

First, the Colorado PUC requests that the FCC provide clarification to or modify its Order relating to the delegated authority of the states to require the return of unused codes or blocks to the administrator. Allowing the states to order code or block holders to return unused codes or blocks to the administrator will further the goal of number

⁹ Order at 31.

resource optimization. Further, the Colorado PUC requests that the FCC provide clarification to its Order as to what constitutes a "conservation method" subject to FCC review prior to implementation. Alternatively, we recommend a modification to the Order allowing states to proceed with any appropriate "conservation methods" without formal FCC approval. Any party, including the state itself, could use the process outlined in paragraph 31 if there is a question about a state's proposed action. This could be done prior to or subsequent to a state Commission action.

Respectfully,


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In the Matter of the Pennsylvania)
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Dated July 15, 1997 Regarding Area) NSD File No. L-97-42
Code Relief in the 610, 215, 717)
and 412 Area Codes)

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